
ANNUAL DELIBERATION ON BRAZILIAN COMPANIES' FINANCIAL STATEMENT

Luiz Guilherme Trevisan
lgtrevisan@almeidalaw.com.br

Danielle Christians
dachristians@almeidalaw.com.br

I. Annual Deliberation on Corporation and Limited Liability companies

By means of the Brazilian regulations, annually the quotaholders of corporation and Brazilian limited liability company shall meet to discuss and approve: (i) financial statements withdraw by the Director of the Company; (ii) destination of the net profit result.

The Annual General Meeting ("AGO") is hold by the shareholders of the Corporation.

The Meeting of Quotaholders is hold by the Brazilian Limited Liability Company's quotaholders.

The meetings between quotaholders and shareholders shall be provided annually, until the 4th (fourth) month after the ending of the fiscal year, which usually coincides with the civil year¹, by this mean, until the end of April of the subsequent year, the minutes of

¹ Article 132, Brazilian Joint-Stock Company Law n. 6.404/76: "Annually, within the four (4) primary months after the end of fiscal year, it must be one (1) Minutes of Meeting to: I – take the Directors accounts, examine and vote the financial statements; II – define the destination of the net profit and the dividends distribution; III – elect the Directors and members of the Audit Committee, when it is the case; IV – approve the correction of the monetary expression of the capital corporate.

Article 1.078, Brazilian Limited Liability Company Law n. 10.406/02: "The meeting of Quotaholders shall be held at least once a year, within four months after the end of the fiscal year, aiming the: I - management accounts and decide on the balance sheet and economic results; II - appoint directors when appropriate; III - For any other subject on the agenda (...)"

the meeting shall need to be registered before Commercial Register.

II. Report of Annual Deliberation and publication of the financial statements

When dealing with Corporation, the annual financial statements may be published in newspaper of wide circulation and at the Official Gazette of the State ("DOE"), whereby the head office is hold, within at least five (5) days of the designated date of the Meeting, mandatory condition for filling of the Minutes before the Commercial Registry.

With respect to Limited Liability Companies, there is no need of publishing the minutes on the DOE, except in case of companies considered "Large Size", in other words, a company or group of companies under common control that has in the previous fiscal year, total assets of more than R\$ 240,000,000.00 (two hundred forty million reais) or an annual gross income of R\$ 300,000,000.00 (three hundred million reais).

However, there is controversy about the requirement of publication of the financial statement of the previous exercise by Limited Liability Company, as per the introduction of Law n. 11.638/2007², which provides the application of the Corporation

² Article 3, Law n. 11.638/07: "Apply to companies with large size, even though not incorporated by the form of joint stock companies, the provisions of Law 6.404/76 with respect to bookkeeping and preparation of financial statements and the requirement for independent audit by an auditor registered with the Securities and Exchange Commission."

Law to the “Large Size” Brazilian Limited Liability Companies, with respect to the preparation of the financial statement and its eventual need of publication.

Worth emphasizing that the Brazilian Central Bank Circular n. 2.997 of August 15, 2000, that provided information of Foreign Investment in Brazil was repealed by Circular n. 3.491, published on the Official Gazette of Federal Executive on March 26, 2010 and has determined that no longer is mandatory the insertion of annual reports on the Brazilian Central Bank system, regarding Brazilian companies that withhold foreign investors investment on the corporate capital of the company; and branches of foreign companies authorized to operate in Brazil.

III. Penalties for the non deliberation of Annual Statements

There are no penalty established by the Commercial Registry or by the law, in case of non realization of the Meeting to deliberate the annual accounts, however, it may incur in corporate and accounting impacts.

The non presentation of the Annual Deliberation with respect to the financial statements and destination of the net profit, can: (i) be object of discussion before third parties and minority quotaholders/shareholders that cannot analyze and deliberate the accounts and profit of the Company; and (ii) strive civil liability of the administrators, for the damage caused by the non registration and publication of the annual deliberations of the Company.

The corporate department of Almeida Advogados has a specialized team with expertise on the procedures and necessary measures regarding the registration of the Annual Meeting before the Commercial Registry, and is available for any further clarifications deemed necessary in connection with the matter discussed herein.